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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,816	01/24/2002	Ronald L. Mahany	36500ZXD	4621
<div>7590 02/20/2008</div> <div>Christopher C Winslade McAndrews Held & Malloy 500 W Madison Street Suite 3400 Chicago, IL 60661</div>				
<div>EXAMINER</div> <div>VO, NGUYEN THANH</div>				
<div>ART UNIT</div> <div>PAPER NUMBER</div> <div>2618</div>				
<div>MAIL DATE</div> <div>DELIVERY MODE</div> <div>02/20/2008</div> <div>PAPER</div>				

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/057,816	Applicant(s) MAHANY, RONALD L.	
	Examiner Nguyen Vo	Art Unit 2618	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
 12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
 13. ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 1/14/2008 have been fully considered but they are not persuasive.

Correction to Office Action Made Final

The examiner agrees with applicant that the typo error at page 11 in the Final Office Action mailed on 11/14/2007 should be corrected. More particularly, claims 77, 90, 102, 114, 127 and 141 are now excluded at page 11 of the Final Office Action.

Specification

Applicant does not provide any explanations as to how the "incorporated by reference" is supported by the original specification. Accordingly, the objection to the specification is still remained.

Rejection under 35 U.S.C. 112, first paragraph

Applicant argues that the claimed limitations of a machine-readable storage and a plurality of code sections are supported by the present specification on page 27 lines 18-21 and pages 44-50. The examiner, however, disagrees. The present specification on page 27 lines 18-21 only discloses different memories. It does not disclose "**A machine-readable storage**" having stored thereon a computer program having "**a plurality of code sections**" for implementing each step as specified in claim 88. The same discussion is applied with respect to pages 44-50 of the present specification

Applicant further argues that the claimed limitations of a machine-readable storage and a plurality of code sections are supported by the appendices cited in the

present specification. The examiner, however, disagrees. It is not clear as to how the cited appendices support the claimed limitations of a machine-readable storage and a plurality of code sections. If the applicant still disagrees with the examiner, he is requested to point out how each of the claimed limitations in claims 88-98 is fully supported by the cited appendices.

Rejection under 35 U.S.C. 103(a)

Applicant argues that Kageyama is not in the field of applicant's endeavor because applicant uses radio frequency data communication system, while Kageyama uses wired data communication system. The examiner, however, disagrees. As stated in the Final Office Action mailed on 11/14/2007, Kageyama is in the same field of applicant's endeavor which is data communication system (see Kageyama, column 1 lines 5-8). As known in the art, data communication systems can use radio frequency as medium to carry data, or wire as medium to carry data. Accordingly, the fact that applicant's invention uses radio frequency medium and Kageyama uses wired medium does not imply that they are in different field of endeavor.

Applicant further argues that Kageyama is not pertinent to the particular problem with which the applicant was concerned, since the "pertinent problem with which the applicant was concerned was radio frequency data communication system" (see page 4 of applicant's response). The examiner, however, disagrees. First of all, "radio frequency data communication system" is a system per se, not a problem. In addition, Kageyama is in the same field of applicant's endeavor as discussed above. In addition,

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applicant's attention is directed to Kageyama, column 1 lines 31-39 which addresses the problem of using high data rate/low data rate in good/bad channel quality.

For the foregoing reasons, the examiner contends that Zook and Kageyama is properly combined.

Regarding claim 32, applicant argues Zook fails to disclose "wherein a multiplicity of mobile transceiver units are to collect data and are to transmit the collected data promptly after its collection to a base transceiver station" as claimed, because only one mobile transceiver unit 209 can be in communication with the base station 76. The examiner, however, disagrees. Zook at column 7 lines 44-55 discloses that each mobile transceiver unit 20 can program the base station 76 so that they can perform data communication. Accordingly, the base station 76 can communicate with different or multiple mobile transceiver units 20 as required by claim 32. More particularly, a user of a first mobile transceiver unit 20 places the first mobile transceiver unit 20 in the base station 76 so that an unique address or identifier will be downloaded from the first mobile transceiver unit 20 to the base station 76 (see Zook, column 7 lines 44-55). After that, the first mobile transceiver unit 20 is taken out from the base station 76 so that it can operate its data collection function (see column 1 lines 13-21 which discloses data collection function). The collected data is then promptly transmitted to the base station 76 together with the unique address (see column 7 lines 9-55). This unique address will be of course recognized by the base station because the unique address has previously been stored in the base station when the first mobile transceiver unit 20 was placed in the base station as discussed above. Therefore, the first mobile

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transceiver unit 20 and base station 76 can properly communicate. **Of course, the same procedure will be applied to a user of a second mobile transceiver unit 20 if he also wishes to use his unit 20 with the base station 76.** This user of the second mobile transceiver unit 20 first places the second mobile transceiver unit 20 in the base station 76 so that the unique address or identifier will be downloaded from the second mobile transceiver unit 20 to the base station 76 (see Zook, column 7 lines 44-55). After that, the second mobile transceiver unit 20 is taken out from the base station 76 so that it can operate its data collection function (see column 1 lines 13-21 which discloses data collection function). The collected data is then promptly transmitted to the base station 76 together with the unique address (see column 7 lines 9-55). This unique address will be of course recognized by the base station because the unique address has previously been stored in the base station when the second unit 20 was placed in the base station 76. Therefore, the second mobile transceiver unit 20 and base station 76 can properly communicate. Accordingly, the base station 76 can communicate with a mobile transceiver unit 20 and a second transceiver unit 20 as required by claim 32.

Also regarding claim 32, applicant argues that Zook fails to disclose each of the claimed limitations. The examiner, however, disagrees. As clearly stated in the Final Office Action, the combination of Zook and Kageyama discloses "said base transceiver station effecting a communication" as claimed (see Kageyama, see column 7 line 52 to column 8 line 10); "the mobile transceiver units evaluating the communication" as claimed (Zook discloses mobile transceiver units 20; Kageyama discloses transceiver units evaluating communication at column 7 line 52 to column 8 line 10; therefore, Zook

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as modified by Kageyama would disclose "the mobile transceiver units evaluating the communication" as claimed); "said mobile transceiver units which predict successful communication with the transceiver station at the increased data rate responding to signals from the transceiver station at the increased data rate " (Zook discloses mobile transceiver units 20; Kageyama discloses transceiver units which predict successful communication with the transceiver station at the increased data rate responding to signals from the transceiver station at the increased data rate, at column 7 line 52 to column 8 line 10; therefore, Zook as modified by Kageyama would disclose "said mobile transceiver units which predict successful communication with the transceiver station at the increased data rate responding to signals from the transceiver station at the increased data rate" as claimed); "said mobile transceiver units which fail to predict successful communication with the transceiver station at the increased rate responding signals from the transmission station at the limited data rate" (Zook discloses mobile transceiver units 20; Kageyama discloses transceiver units which fail to predict successful communication with the transceiver station at the increased rate responding signals from the transmission station at the limited data rate, at column 7 line 52 to column 8 line 10; therefore, Zook as modified by Kageyama would disclose "said mobile transceiver units which fail to predict successful communication with the transceiver station at the increased rate responding signals from the transmission station at the limited data rate" as claimed).

Previous Arguments Made by Applicant for Reconsideration

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First of all, the examiner's comments with respect to applicant's arguments as set forth above are herein incorporated. In addition, the examiner's comments with respect to applicant's arguments as set forth in the Final Office Action mailed on 11/14/2007 are herein incorporated.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nguyen Vo whose telephone number is (571) 272-7901. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban can be reached on (571) 272-7899. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nguyen Vo
Primary Examiner
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2-6-2008